PRINCE EDWARD ISLAND
HUMAN RIGHTS COMMISSION

ANNUAL REPORT
2005-2006

The Prince Edward Island Human Rights Commission
is an independent, arms-length body
that investigates, attempts to settle and
makes rulings on complaints of discrimination
that fall under the
Prince Edward Island *Human Rights Act*

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Message from the Chair

In the Provincial Budget announced on April 1, 2005, Government reduced our funding by one-quarter. Due to this funding cut, we were forced to reduce staff by laying off our Education Officer, and implement other cost-saving measures. While Government has restored some of the funding during the current fiscal year, we have not been able to reestablish the position of Education Officer, resulting in the loss of education programs. Apart from the difficulty caused by uncertainty in the budget process, the loss of the education component means the diminishment of the profile in the community for human rights programs. The loss has been particularly acute in Island schools, where human rights education can pay dividends in reaching young people, who will be proponents of inclusiveness as they grow older. I would encourage Government to fully restore funding to the Commission to allow us to carry out our legislative mandate.

The PEI *Human Rights Act* allows for the appointment of as many as nine Commissioners, but until the past year, there had never been more than three appointed. However, now we have six Commissioners, who have participated in 34 hearing days, a similar number of decision-writing days, in addition to Commission meetings and other human rights events. The Standing Committee on Social and Economic Development (which recommends the appointments) was persuaded by the fact that Commissioners are part-time appointments and their hearing duties were becoming onerous. The appointment of more Commissioners is a welcome change.

This will be the last time that I report on the activities of the Commission, because my term has expired. I was appointed in 1997 along with Commissioner Richard Noonan, whose term has also expired. Richard's support and wise counsel have been greatly appreciated over the years. The Commission was a very different organization when I was first appointed as Chair. Shortly after we arrived, Government amended the legislation to give Commissioners the power to adjudicate human rights hearings. Dealing with the constraints of the legal process and inevitable judicial reviews of our decisions has been a challenge. Nevertheless, with the assistance of staff and the support of Departmental colleagues, we have accomplished a great deal to advance human rights protections in this Province. I would like to take this opportunity to reinforce the importance of maintaining meaningful and open discussions with Government about our budget, and providing adequate and efficient delivery of the Commission's mandate.

George S. Kells, Chair

Commissioners and Staff

Richard W. Montigny, Chair
Richard Montigny was appointed Commissioner on May 19, 2004. He was appointed Chair of the Commission on April 11, 2006. Mr. Montigny's term expires on May 19, 2007.

Anne Nicholson, Commissioner
Anne Nicholson was appointed Commissioner on May 19, 2004. Commissioner Nicholson's term expires on May 19, 2007.

Gerry O'Connell, Commissioner
Gerry O'Connell was appointed Commissioner on April 11, 2006. Commissioner O'Connell's term expires on April 11, 2008.

Maurice Rio, Commissioner
Maurice Rio was appointed Commissioner on April 11, 2006. Commissioner Rio's term expires on April 11, 2009.

Ann Sherman, Commissioner
Ann Sherman was appointed Commissioner on May 19, 2004. Her appointment was renewed on April 11, 2006. Commissioner Sherman's term expires on May 19, 2009.

Lou Ann Thomson, Commissioner
Lou Ann Thomson was appointed Commissioner on April 11, 2006. Commissioner Thomson's term expires on April 11, 2008.

In April 2006, two long-time Commissioners left when their terms expired.

George S. Kells, Past Chair
George Kells served as Chairperson of the Prince Edward Island Human Rights Commission from February 13, 1997, to April 11, 2006.

Richard Noonan, Past Commissioner
Richard Noonan served as Commissioner for the Prince Edward Island Human Rights Commission from February 13, 1997, to April 11, 2006, and a term prior to that from 1985 to 1989.

Note of Thanks
The present Chair, Commissioners and staff would like to take this opportunity to thank Mr. Kells and Mr. Noonan for their contributions to the Prince Edward Island Human Rights Commission and for their efforts and success in promoting and advancing human rights on PEI.

Commissioners and Staff

Chair:	Richard W. Montigny
Commissioners:	Anne Nicholson Gerry O'Connell Maurice Rio Ann Sherman Lou Ann Thomson
Executive Director:	Gregory J. Howard
Human Rights Officer:	Jacqueline R. O'Keefe
Admin/Intake Officer:	B. Lorraine Buell
Education Officer:	Mary Joan Campbell - Position vacant as of August 19, 2005, due to insufficient funding

Standing: Greg Howard, Ann Sherman, Lorraine Buell, Anne Nicholson, Gerry O'Connell
Seated: Maurice Rio, Jacqueline O'Keefe, Lou Ann Thomson, Richard Montigny

Complaint Statistics

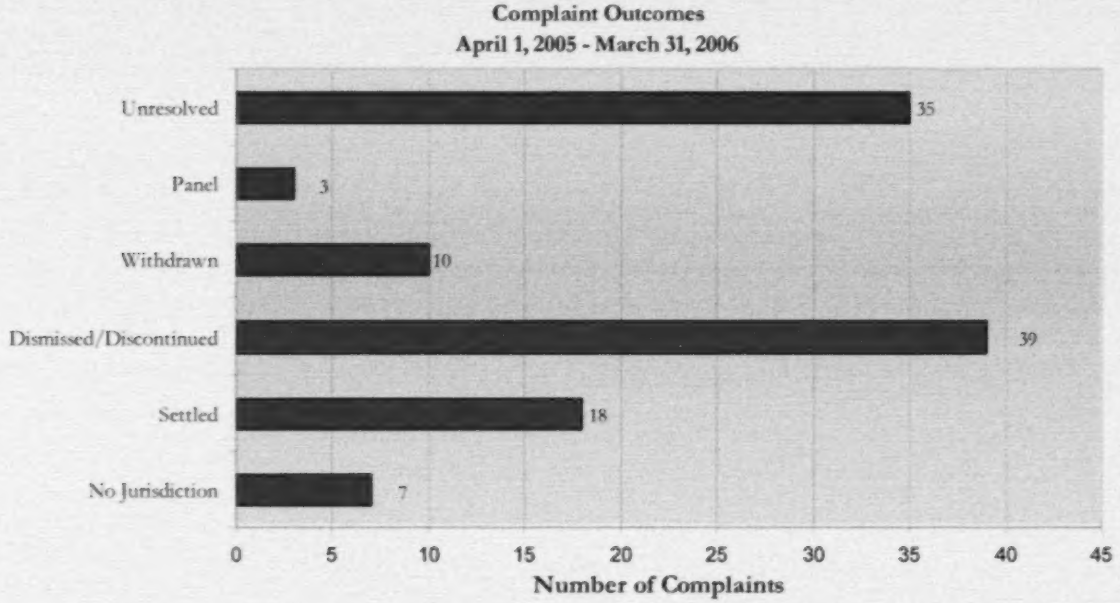
There were a total of one hundred and twelve active complaints throughout this fiscal year. There were sixty unresolved complaints carried over from previous years, and fifty two new complaints filed in 2005-06.

NUMBER OF COMPLAINTS IN AREA AND GROUND			
Ground of Discrimination	**Employment**	**Other Areas**	**Total**
Age	8	1	9
Association	3	1	4
Colour, Race, Ethnic/National Origin	5		5
Creed/Religion	1		1
Criminal Conviction	2		2
Family Status	2	2	4
Marital Status	2	1	3
Physical/Mental Disability	23	13	36
Political Belief			
Sex/Gender (including Pregnancy and Harassment)	20	2	22
Sexual Orientation	1	1	2
Source of Income		1	1
Filing a Complaint/Giving Evidence			
Multiple Grounds	10	13	23
Total Number of Complaints	77	35	112

As in previous years, most complaints arise in the area of employment (68%), while the most common grounds of discrimination are disability (20%) and sex (17%).

Complaint Statistics (continued)

During the 2005-2006 fiscal year, the Commission conducted three panels of inquiry, ten complaints were withdrawn, thirty-nine complaints were dismissed or discontinued, eighteen complaints were settled and seven complaints were deemed to not be within the jurisdiction of the Prince Edward Island Human Rights Commission. This left a total of thirty-five complaints unresolved and carried into the next fiscal year.



Unresolved: Complaints under investigation, undergoing settlement negotiations or awaiting a panel hearing

Panel: Complaints that went to a panel hearing

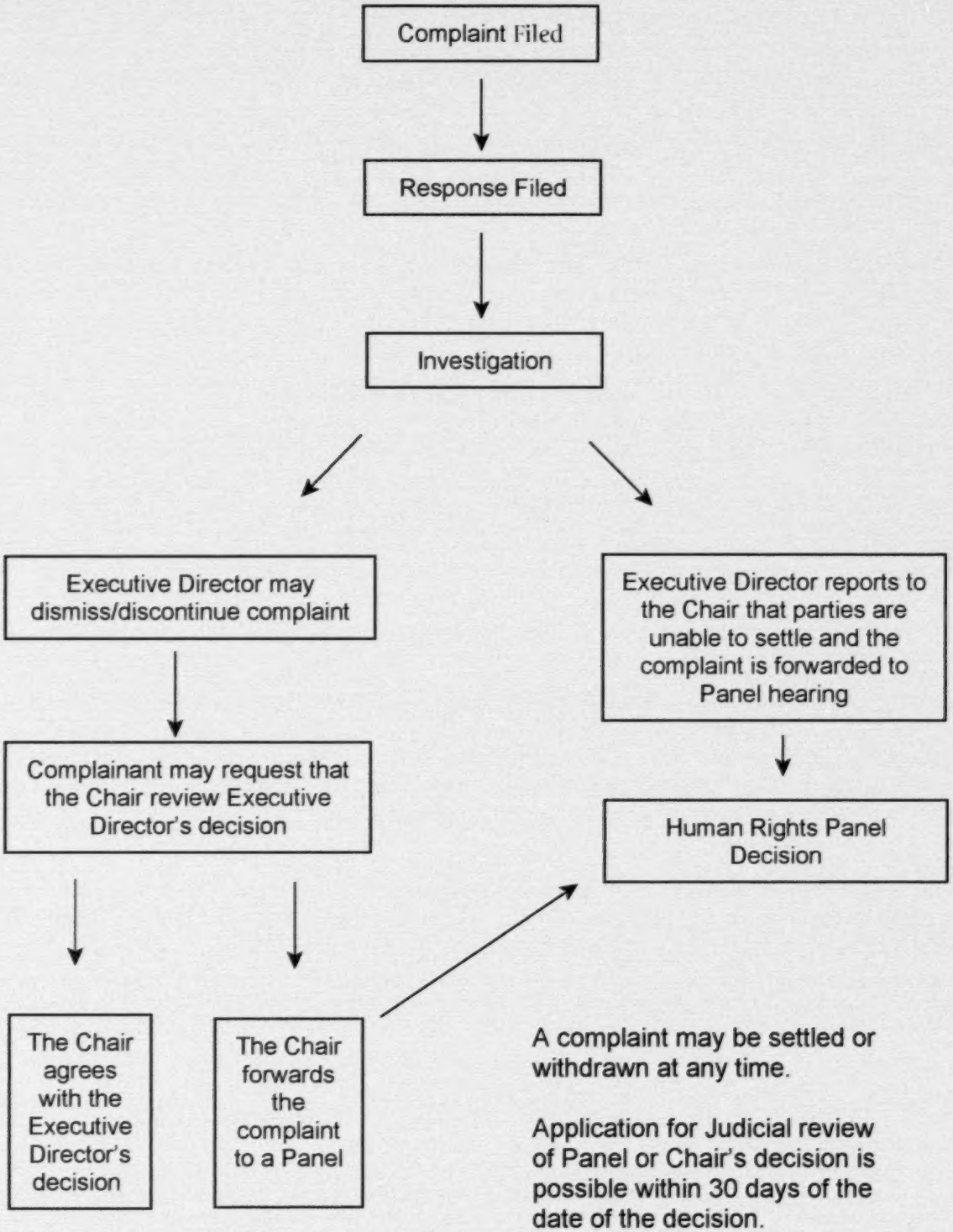
Withdrawn: Complaints withdrawn by complainant or complaints considered withdrawn as complainant cannot be reached

Dismissed or Discontinued: Complaints dismissed or discontinued by Executive Director as set out in the *Act* (s.22(4))

Settled: Complaints settled without going to a panel hearing

No Jurisdiction: Complaints filed that did not fall under the jurisdiction of the PEI *Human Rights Act*, including those complaints filed outside the one year limitation period

Complaint Process


Complaint Filed
Response Filed
Investigation
Executive Director may dismiss/discontinue complaint
Complainant may request that the Chair review Executive Director's decision
The Chair agrees with the Executive Director's decision
The Chair forwards the complaint to a Panel
Executive Director reports to the Chair that parties are unable to settle and the complaint is forwarded to Panel hearing
Human Rights Panel Decision
A complaint may be settled or withdrawn at any time.
Application for Judicial review of Panel or Chair's decision is possible within 30 days of the date of the decision.

Settlements

The following summaries are examples of some of the human rights complaints that were settled during the 2005-2006 fiscal year:

Age and Family Status

A young person filed a complaint against a landlord alleging she was being denied an apartment because she had a child. The Complainant had offered references and a deposit. In a settlement reached by the parties, the Respondent agreed to rent the apartment to the Complainant.

Criminal Conviction

An employee filed a complaint against his former employer because he was dismissed due to a criminal conviction for possession of child pornography. The conviction did not relate to his employment. In a settlement reached by the parties, the Respondent agreed to pay compensation for general damages to the Complainant.

Disability

An employee filed a complaint of discrimination against her employer. The woman had been off work due to injuries sustained in an accident outside of work. The Complainant alleged that her employer prematurely terminated her employment. The employer agreed to pay the woman compensation for lost wages and general damages.

Sexual Harassment

A woman filed a complaint against her co-worker and her employer based on the ground of sexual harassment. She alleged that her co-worker had sexually assaulted her and had threatened her and her daughter. She alleged that her employer failed to help her because she did not receive the appropriate assistance from her management team to stop the co-worker's harassment. The complaint was resolved when the alleged harasser resigned.

Sexual Orientation

A man filed a complaint against his former employer alleging that his general manager had sexually harassed him and made homophobic comments. The man stated that his general manager stated in front of other employees and customers that she "knew what he was." The employee resigned due to humiliation. In a settlement reached by the parties, the employer agreed to pay compensation for general damages and issue a letter of apology to the Complainant.

Panel Hearing Decisions

Ayangma v. Eastern School Board

Hearing Dates: March 14; May 10, 11, 12; June 15, and 16; and July 5,6, and 8, 2005
Date of Decision: December 8, 2005
Panel Member: Richard W. Montigny

Noel Ayangma filed a complaint with the PEI Human Rights Commission on August 17, 1998, against the Eastern School District and/or Regional Administrative School Board, Unit III, alleging that he had been repeatedly refused employment by the School District over a ten-year period because of his race, colour, ethnic or national origin, and age. Alternatively, Mr. Ayangma alleged systemic discrimination in violation of section 6 of the Prince Edward Island *Human Rights Act* R.S.P.E.I. 1988, Cap. H-12 and section 15 of the *Canadian Charter of Rights and Freedoms*. The Eastern School Board denied the allegations of discrimination, stating that Mr. Ayangma reactivated his application annually but did not provide a current resume. He had not worked for the Respondent since 1988 and had not placed his name on the list of substitute teachers.

The Panel found that Mr. Ayangma had been denied an opportunity to compete for teaching positions between August 17, 1997, and August 17, 1998, on the basis of race, color, ethnic or national origin, and age. However, it did not find that he would have become a principal because there was but a mere possibility of this. Mr. Ayangma was awarded $55,000.00 for lost wages and $6,000 for hurt and humiliation.

Both parties have applied for judicial review. The matter is scheduled to be heard by the PEI Supreme Court, Trial Division on September 15 and 16, 2006.

Panel Hearing Decisions (continued)

Theresa Gill v. The Royal Canadian Legion (Charlottetown Branch No. 1)

Hearing Dates: November 15, 2005
Date of Decision: February 2, 2006
Panel Member: George S. Kells

Theresa Gill filed a complaint with the PEI Human Rights Commission on March 29, 2004 alleging that the Royal Canadian Legion ("Legion") had discriminated against her in employment on the basis of disability. Ms. Gill broke her wrist and was unable to work until her wrist had healed sufficiently to be placed in a flexible cast. She advised the Legion that she could return to work for light duties and was given the impression that she would be placed on the schedule. She was not permitted to return to work and filed her complaint. She alleged reprisal when she was not placed on the schedule for several months after she filed her complaint.

The Respondent denied the allegations of discrimination, stating that the decision not to call the Complainant into work was made in good faith. The Respondent stated that it had legitimate safety and sanitation concerns regarding the Complainant returning to work with a cast.

The Panel found that Ms. Gill was discriminated against because she was perceived to have a disability and because she filed a human rights complaint. Ms. Gill was awarded $3,200.00 for lost wages and $1,500 for hurt and humiliation.

Gael Matheson v. Presbytery of PEI

Hearing Dates last fiscal year: November 23 - 24, 2004
Hearing Dates this fiscal year: April 25, 26, 27, 28; June 1, 2, 3,6, 7; September 7, 8, 12, 13; October 12, 13, 14; December 12, 13, 2005; January 23, 24, and 25, 2006
Panel Members: Richard W. Montigny, Anne Nicholson & Ann Sherman

The decision is expected on August 23, 2006.

Reverend Matheson alleges that the Presbytery of Prince Edward Island discriminated against her in employment on the basis of sex, when it terminated her relationship as minister of four rural congregations.

Legal Decisions

Ayangma v. French School Board 2005 PESCAD 18

A panel of the PEI Human Rights Commission dismissed the appellant's claim of discrimination on the basis of color, age or ethnic or national origin. A judicial review of that decision was dismissed at trial. On appeal, the dismissal of the judicial review was upheld. The court held that while choices were made by the school board that resulted in the appellant not being hired, there was no evidence to support his claim that these choices were based upon the prohibited grounds of color, age, or ethnic or national origin.

> *The discrimination prohibited by the* ***Human Rights Act*** *is discrimination on the basis of one of the prohibited grounds: discrimination in relation to age, colour, creed, ethnic or national origin, family status, marital status, physical or mental handicap, political belief, race, religion, sex, sexual orientation, or source of income. While this is a fairly long list delineating the reasons that cannot factor into a decision about a person, it does not prohibit in a general sense discrimination in the sense of choice. Discrimination in its broadest sense is not a negative. It is simply an act of distinguishing, noting differences, making a choice. Choices are not illegal. Only those choices that can be found to be based upon prohibited grounds are illegal (At para 55 as per The Honourable Madam Justice L. K. Webber).*

Ayangma v. French School Board 2005 PESCAD 22

Following the decision of the Appeal Division in Mr. Ayangma's favour, costs, on a partial indemnity basis, were awarded to the Respondent Board, however, the parties were unable to agree upon the amount. On this motion, costs were ordered to be paid by the Appellant to the Respondent for the appeal in the amount of $6,823.10.

McQuaid v. PEI Human Rights & Ors. 2005 PESCTD 35

This was an application by Wendy McQuaid for judicial review of the decision of the Chairperson of the PEI Human Rights Commission. The Chairperson had upheld the decision of the Executive Director, which had dismissed Ms. McQuaid's complaint that she was discriminated by her employers and others based on her disability. The application was dismissed. The Court found that the decision was sound and reasonably supported by evidence, which was appropriately assessed.

Condon v. Gov't PEI and Human Rights Comm. 2006 PESCAD 01

This was an appeal by the PEI Government from a decision of the Trial Division, which declared unconstitutional the statutory limitation on the available remedies for political belief discrimination and compensation formula. The appeal was dismissed. The Court stated that the amendments to the *Human Rights Act* did not advance the cause of human rights, but instead were intended to dispose of the numerous complaints that followed the election of the Conservative Party. The Court found that the amendments treated these employees differently than other political belief claimants and were, therefore, unconstitutional.

This matter has been appealed to the Supreme Court of Canada, however, leave has not yet been granted or denied.

Dowling v. Gov't PEI and Angela Cormier 2006 PESCAD 42

This was an application by Mr. Dowling for judicial review of the decision of Angela Cormier, the PEI Human Rights Panel, on the basis of the quantum of damages and the Panel's refusal to grant a reconsideration. The Panel did not find Mr. Dowling's termination to be discriminatory, but rather, found that he was denied an opportunity to compete for the position of Golf Shop Supervisor on the basis of political belief and association with others who held that belief.

> *A **Human Rights Act** hearing is similar to the judicial process in that evidence is taken under oath, exhibits entered and the Tribunal has the authority to make findings of fact and issue binding orders, including an award of damages. This is close to the judicial process and as such requires procedural protection close to the trial model in regard to a duty of fairness. The **Judicial Review Act** does provide for a review procedure and this tends to lessen the requirement for procedural fairness. (At para 50 as per Honourable Chief Justice Jacqueline R. Matheson)*

Ayangma v. Eastern School Board - Court File # S1-GS-21392

Both parties have applied for judicial review of the PEI Human Rights Panel decision, dated December 8, 2005. There have been numerous motions made by both parties since the decision of the Panel, regarding the payment of the Panel award. The Eastern School Board applied for a stay, however, this was not granted. Mr. Ayangma has received his award, as per the order of the Panel.

The judicial review has been set for September 15 and 16, 2006.

AUDITOR GENERAL

CHARLOTTETOWN
PRINCE EDWARD ISLAND

PRINCE EDWARD ISLAND

HUMAN RIGHTS COMMISSION

FINANCIAL STATEMENTS

MARCH 31, 2006

AUDITOR GENERAL

CHARLOTTETOWN
PRINCE EDWARD ISLAND

AUDITOR'S REPORT

To the Commissioners of the
Prince Edward Island Human Rights Commission

I have audited the balance sheet of the Prince Edward Island Human Rights Commission as at March 31, 2006 and the statements of revenue, expenditures, and surplus (deficit) and cash flows for the year then ended. These financial statements are the responsibility of the Commission's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Commission as at March 31, 2006 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

Colin Younker, CA
Auditor General

Charlottetown, Prince Edward Island
May 9, 2006

STATEMENT 1

PRINCE EDWARD ISLAND HUMAN RIGHTS COMMISSION

BALANCE SHEET

AS AT MARCH 31, 2006

	2006	2005
ASSETS		
Current Assets		
Accounts receivable		
- General	$ 325	$ 339
- Province of PEI	32,700	-
Prepaids	446	910
	$33,471	$1,249
LIABILITIES AND SURPLUS (DEFICIT)		
Current Liabilities		
Bank advances	$ 6,258	$13,947
Accounts payable	6,971	9,252
	13,229	23,199
Surplus (deficit) - Statement 2	20,242	(21,950)
	$33,471	$ 1,249

(The accompanying notes are an integral part of these financial statements.)

SIGNED ON BEHALF OF THE COMMISSION:

COMMISSIONER: Richard W. Mortzjoy

COMMISSIONER:

STATEMENT 2

PRINCE EDWARD ISLAND HUMAN RIGHTS COMMISSION

STATEMENT OF REVENUE, EXPENDITURES, AND SURPLUS (DEFICIT)

FOR THE YEAR ENDED MARCH 31, 2006

	2006	2005
Revenue		
Provincial grant	$341,700	$304,000
Expenditures		
Commissioner's per diems (Note 4)	23,530	15,531
Conferences and training	566	2,411
Furniture and equipment - (Note 2)	-	1,583
Memberships	2,915	2,815
Miscellaneous	978	1,264
Office maintenance, supplies and subscriptions	6,355	10,451
Photocopying	4,204	3,577
Professional fees	-	155
Rent	19,500	18,500
Salaries and benefits - (Note 5)	229,902	254,315
Travel - Staff	3,211	4,911
- Commissioners	3,448	2,811
Telephone	4,899	5,192
	299,508	323,516
Excess revenue (expenditures) for the year	42,192	(19,516)
Surplus (deficit), beginning of year	(21,950)	(2,434)
Surplus (deficit), end of year	$ 20,242	$ (21,950)

(The accompanying notes are an integral part of these financial statements.)

STATEMENT 3

PRINCE EDWARD ISLAND HUMAN RIGHTS COMMISSION

STATEMENT OF CASH FLOWS

FOR THE YEAR ENDED MARCH 31, 2006

	2006	2005
CASH FLOWS FROM OPERATING ACTIVITIES		
Cash received from Province of PEI for operations	$309,000	$304,000
Cash paid for salaries and benefits	(230,324)	(255,334)
Cash paid for materials and services	(70,987)	(70,432)
Net increase (decrease) in cash	7,689	(21,766)
Cash (bank advances), beginning of year	(13,947)	7,819
Cash (bank advances), end of year	$ (6,258)	$ (13,947)

(The accompanying notes are an integral part of these financial statements.)

PRINCE EDWARD ISLAND HUMAN RIGHTS COMMISSION

NOTES TO FINANCIAL STATEMENTS

MARCH 31, 2006

1. Purpose of the Organization

The P.E.I. Human Rights Commission is a corporate body which is responsible for administering and enforcing the provincial Human Rights Act. The Commission provides education and public information in the field of human rights. The Commission also inquires into and endeavours to effect a settlement of any complaint of a violation of the Human Rights Act filed with the Commission as prescribed by the Act.

2. Significant Accounting Policy

Basis of Presentation

These statements were prepared in accordance with Canadian generally accepted accounting principles for non-profit organizations, with office equipment, furniture and computer software expensed in the year purchased. Furniture and equipment expensed for the year ended March 31, 2006 were $ nil (2005 - $1,583).

3. Lease Commitment

The Commission has cancelled its lease on its office premises effective March 31, 2006. The Commission also leases a photocopier. The future minimum lease payments are as follows:

Fiscal Year	Amount
2007	3,161
2008	3,161
2009	3,161
2010	2,108
	$11,591

4. Commissioner's Per Deims

In addition to attending monthly meetings, Commissioners also conduct panels of inquiry. Panel hearing per diems totalled $13,286. The remaining amount was for meetings and other per diems.

5. Salary and Benefits

a) Pension Costs

The employees at the Commission participate in a defined contribution pension plan. The Commission makes contributions amounting to 6.95% on that part of the salary on which Canada Pension Plan contributions are made and 8.75% on salary when

Canada Pension Plan contributions are not required. The employee is not required to match or contribute to the pension. These contributions are paid to a Registered Retirement Savings Plan (RRSP) as selected by the employee.

b) Vacation Pay and Retirement Allowances

Vacation pay is recorded as a liability when earned. Liabilities for retirement and severance are funded by the Province when payments are due. No liability for retirement/severance is recognized in these statements.

6. Fair Value of Financial Assets and Liabilities

The fair value of the Commission's accounts receivable, bank advances, and accounts payable approximate their carrying values.

7. Comparative Figures

Certain figures for 2005 have been reclassified to conform with current year presentation.

For More Information
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